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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,992	04/19/2004	Kim M. Parmater	31419.26003	3488
7590 04/06/2006			EXAMINER	
Heather M. Barnes Brouse McDowell, LPA 106 S. Main Street, Ste. 500 Akron, OH 44308-1471			LEWIN, ALLANA	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/826,992

Applicant(s)

PARMATER, KIM M.

Examiner

Allana Lewin

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21 is/are allowed.
- 6) ☒ Claim(s) 1-10 and 14-20 is/are rejected.
- 7) ☐ Claim(s) 11-13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/19/2004
62-19-04 / 10-5-04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 120, 142, and 146.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "80" (page 8, line 28) and "86" (page 8, line 1) have both been used to designate the 'seat assembly support tube'.
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "80" has been used to designate both the 'seat assembly' and the 'seat assembly support tube' (page 8, line 28).
4. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

5. Claim 3 is objected to because of the following informalities: in line 2 of the claim, the phrase 'head rest assembly comprises a' is redundant and should presumably be deleted. Appropriate correction is required.
6. Claim 8 is objected to because of the following informalities: the limitation "seat assembly support tube" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 4-7, 9, 10, 14, 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lui et al. (US Pat. No. 5,533,953) in view of Deola (US Pat. No. 6,793,610).
9. Lui discloses an exercise device comprising a horizontal support means in the form of a bottom frame assembly with first and second ends (20) comprising a cross member (23) located near the second end of the bottom frame assembly, and first and second side members defining a first plane (21); a 'leg bar' assembly (60) pivotally mounted to the horizontal support (24) and movable between a substantially vertical position and a first range of angular positions (note Figures 5 and 6); a 'lift bar'

assembly (40 and 50) pivotally mounted to the bottom frame assembly (25) and selectively engageable with the 'leg bar' assembly through linkage means (70) and movable between a substantially horizontal position and a second range of angular positions (note Figures 5 and 6); a seat assembly (30) pivotally mounted to the bottom frame assembly (24) and movable between a substantially horizontal position and a third range of angular positions (note Figures 5 and 6) and including a seat member having a lower surface (300) that is selectively engageable via fastener tube (53) with the 'lift bar' assembly; and a resistance cylinder (80) extending between the horizontal support and the 'lift bar' assembly.

10. Regarding claim 7, Lui discloses the 'lift bar' assembly comprising first and second spaced arm members (52 and note Figure 4), a 'cross member' member extending between the arm members (500), and fastener tube (55) which comprehends Applicant's broad recitation of a 'wheel member' as the fastener tube is disposed between and aligned with pivot holes (43) with a screw fastener (56) extending through the pivot holes and the fastener tube thereby allowing the fastener tube to rotate about the screw faster. Examiner notes that the Applicant has not claimed the wheel member engaging the seat assembly or otherwise operatively connected with or in relation to the device.

11. Lui fails to disclose resistance provided by resistance bands that are selectively removable, or the device being portable and adapted to fold for storage.

12. Deola discloses an exercise device comprising a horizontal support means, a 'lift bar' assembly (102, 104), a seat assembly, and removable and interchangeable

resistance bands (134) extending between the horizontal support means and the 'lift bar' assembly. Furthermore, Deola teaches the device being collapsible (note Figure 1) for ease of transport and therefore portability, as well as for convenient storage (column 2, lines 64-67).

13. Based on the teachings of Deola, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized removable and interchangeable resistance bands in the Lui device as it is well known in the art that resistance cylinders and elastomeric bands are commonly substituted for one another and are considered equivalents in function and performance, but also to allow different amounts of resistances to be implemented with device and therefore make the device more versatile. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the Lui apparatus portable and adapted to fold for storage as this would make the device more convenient for home and personal use, but also as it is held that making a device portable or movable without producing any new and unexpected result involves only routine skill in the art. *In re Lindberg*, 93 USPQ 23 (CCPA 1952).

14. Regarding claims 15-20, Lui modified *supra* teaches the recited structure and therefore the method would have been obvious to one having ordinary skill in the art. Furthermore, Lui discloses that the device enables the user to exercise upper and lower parts of the body at the same time (column 5, lines 32-34).

15. Claims 2, 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lui in view of Deola as applied to claim 1 above, and further in view of Chiu et al. (US Pat. No. 5,833,590).

16. Lui, discussed in detail above, fails to disclose a head rest assembly mounted relative to the seat assembly comprising a head support frame, a pair of handgrips extending from the head support frame, or a head rest cushion.

17. Chiu discloses an exercise apparatus comprising a horizontal support means, a leg bar assembly, a seat assembly, and a back frame unit (3) that comprehends Applicant's 'head rest assembly', that is pivotally mounted relative to the seat assembly (23), comprising a head support frame (note Figure 5), a pair of handgrips (33) and a head rest cushion (note Figures 1 and 5). The back frame unit includes massaging wheels or rollers comparable and similar to those provided in the massaging unit of the Lui device that supports a user's back comprising an interconnecting means (92) pivotally connected to the seat assembly at a first end (36) and pivotally connected to the massaging unit at a second end (921), with the Chiu device further including a head support area that allows for additional comfort to the user and provides for a stable and safe support of the user's head, as well as handles that allow a user to use the device for stretching.

18. Based on the teachings of Chiu, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized such a back frame unit or a 'head rest assembly' in the Lui device so as to stabilize the user's head

during exercise thus preventing and avoiding injury, but also in order to allow the device to be used for stretching thereby making the device more versatile and functional.

Allowable Subject Matter

19. Claims 11-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

20. Claim 21 is allowed.

Conclusion

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

22. Bolland (US Pat. No. 5,951,448) discloses an upper and lower body exerciser having a horizontal support means, a seat assembly, and a leg bar.


23. Chen (US Pub. No. 2003/0060342) discloses an exercise device comprising a horizontal support means, a leg bar, a lift bar engageable with the leg bar through linkage means, and a seat assembly.

24. Snyderman et al. (US Pat. No. 5,069,447) discloses an adjustable bench comprising a horizontal support, a leg bar, a lift bar, and a seat assembly.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allana Lewin whose telephone number is 571-272-5560. The examiner can normally be reached on Monday-Friday, 8AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AL 
3/28/2006



STEPHEN R. CROW
PRIMARY EXAMINER
ART UNIT 332